

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

OSBORNE CONSTRUCTION COMPANY¹

Employer

and

Cases 19-RC-13840
19-RC-13841

PACIFIC NORTHWEST DISTRICT COUNCIL
OF CARPENTERS²

Petitioner

and

WASHINGTON and NORTHERN IDAHO
DISTRICT COUNCIL OF LABORERS,
LOCAL 292³

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record⁴ in this proceeding,⁵ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

¹ The name of the Employer appears as corrected at hearing.

² "Petitioner Carpenters" herein. The name of Petitioner Carpenters appears as corrected at hearing.

³ "Petitioner Laborers" herein.

⁴ The parties filed briefs, which have been considered.

⁵ On brief, Petitioner Carpenters moved to correct the transcript in certain specific respects. The motion is hereby denied, inasmuch as the errors cited are not substantial.

3. The labor organizations involved claim to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute units appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

In Case 19-RC-13840: Included: All carpenters employed by the Employer at its Cascade High School jobsite in Everett, Washington;

Excluded: All office clerical employees, guards and supervisors as defined by the Act, and all other employees.

In Case 19-RC-13841: Included: All laborers employed by the Employer at its Cascade High School jobsite in Everett, Washington;

Excluded: All office clerical employees, guards and supervisors as defined by the Act, and all other employees.

The Employer is a general contractor engaged in a construction project at Cascade High School in Everett, Washington. Petitioner Carpenters seeks a unit of all carpenters employed on the jobsite; Petitioner Laborers seeks a unit of all laborers employed on the jobsite. The Employer contends that the only appropriate unit is one which includes all hourly employees on the jobsite. In addition, the Employer contends that Petitioner Carpenters is not a labor organization within the meaning of Section 2(5) of the Act.

Labor Organization Issue

At hearing, the Employer declined to concede that Petitioner Carpenters is a labor organization within the meaning of Section 2(5) of the Act.

A knowledgeable witness testified that approximately 80 local unions in Washington, Oregon, Idaho, and Montana are members of Petitioner Carpenters. The local unions are dispatch points for carpenters to job sites. Employees are members of the local unions and elect officers thereof. The members of the locals also elect delegates to the district council, who in turn choose the officers of the district council, as well as an executive board. Local union members pay dues directly to the district council. The district council negotiates collective bargaining agreements and arbitrates grievances.

The record establishes that Petitioner Carpenters is similar in all respects to the petitioner in *Dezcon, Inc.*, 295 NLRB 109 (1989), found by the Board to be a labor organization. Moreover, Petitioner Carpenters fulfills the definition of Section 2(5) of the Act.⁶ Therefore, I find Petitioner Carpenters to be a labor organization within the meaning of the Act.

Unit Issue

The Cascade High School project involves renovation of two buildings, a ball field, and a parking lot. The job commenced sometime in April 1999, and is expected to last for about two years. The first

⁶ Section 2(5) of the Act defines a "labor organization" as:
[A]ny organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

carpenter was hired on May 26, 1999. The Employer's employees are doing concrete foundation work, rough carpentry,⁷ framing in the buildings and on the roof, installing structural steel and metal decking. Hourly employees on the job include about 19 carpenters, and about 9 laborers. They are all paid prevailing wage rates, which are \$30.77 per hour for the carpenters and \$26.50 for the laborers. The wage rates include benefits, which are the same for all hourly employees. All such employees filled out the same application for hire form, are subject to the same drug testing policy and other Employer policies, work 7:00 a.m. to 3:30 p.m. Monday through Friday, and receive time and a half for overtime on Saturdays. All hourly employees are under the direct supervision of general foreman Don Sorenson. There are three leadmen who are all carpenters, and there is a new leadman who is a concrete finisher and also a carpenter, although there is no evidence that he is performing a dual function; this employee previously worked for the Employer on projects in Alaska and is the only employee working on the high school project who was not hired just for the project.

The carpenters are performing work typical of traditional journeyman carpenters.⁸ Employer witnesses testified that prior experience of at least five years was a significant factor in the hiring of the carpenters. The Employer has no apprenticeship or formal training program for carpenters. Examples of work on the project being done by carpenters include: removing and replacing tongue and groove decking, fascia work, building and stripping concrete forms, and installing some steel elements. Carpenters wear tool belts typically weighing 15 to 30 pounds and festooned with pouches. Tools carried in such belts include hammer, string line, plumb bob, speed square, and screwdrivers; the basic complement of tools costs the individual carpenter about \$500.00. Carpenters also use power tools supplied by the Employer, including Skil saws, drills, routers, nail guns, and a Hilti gun. The Hilti gun is a powder-activated fastening device which uses a .22 caliber powder shot to fire hardened steel studs of various lengths into concrete. Carpenters on the project received special training in the use of the Hilti gun. Carpenters also use air compressors to operate air-powered tools, such as nail guns, and use grinders on steel work. Carpenters must be able to read plans and drawings, and must be able to adjust and adapt the drawings to fit the actual physical site.

Similarly, laborers on the project are doing work typical of laborers on construction projects, such as digging by hand, sweeping, general clean-up, and moving materials from place to place. Laborers were hired on the basis of past experience. The Employer has no apprenticeship or formal training program for laborers. Some of the laborers on the job work as "carpenter tenders" supplying materials to carpenters as needed. Laborers typically bring to the site a few hand tools, including hammer, pliers, screwdriver, and small pry bar. Some laborers wear a tool belt with a hammer loop and a small pouch for tools. The tool belt worn by laborers is much less elaborate than that worn by carpenters. Laborers sometimes use grinders in their work, but do not normally use other power tools, and were not trained in the use of the Hilti gun.

At times, carpenters and laborers work in the same areas. The record does not establish that the two groups regularly work side by side, i.e., there are no examples in the record of carpenters and laborers

⁷ "Rough" carpentry refers to such tasks as framing walls and roofs, applying plywood sheathing, putting wood blocking in, and building forms for concrete.

⁸ At hearing, Employer witnesses characterized the term "journeyman" as a term of art applicable only in situations where a collective bargaining agreement exists. However, the Board recognizes a broader application of the term, as in *ECM, Inc.*, 264 NLRB 1077 (1982), wherein it discussed five carpenters who "perform tasks similar to those traditionally performed by journeymen carpenters." The state of Washington in 1989 substituted the term "journey level workers" for "journeymen," presumably to avoid gender bias. (RCW 39.12.021.) Clearly the concept of "journeyman" is not confined to unions. The term is also used in the construction field (at least) to distinguish one from an "apprentice." Apprenticeships are not limited to unionized contracts.

working together on the same task on a regular basis, such as a carpenter and a laborer working together to strip a form, as distinguished from laborers performing as carpenter tenders supplying materials to carpenters, or a laborer pulling up plywood sheathing or tongue-and-groove siding on a roof prior to the carpenters performing their replace-and-repair work. An Employer witness stated generally that he knows the carpenters and laborers “are integrated and work together all the time.” but was unable to specify the extent to which they work side by side. The same witness said that both carpenters and laborers strip forms, and that carpenters sometimes do laborers’ work, such as digging with a shovel to remove dirt so a concrete form can be properly placed. Another Employer witness said that occasionally a carpenter might use a shovel to remove a clump of dirt out of a hole, rather than get a laborer to do it. Stripping forms is equivalent to “unbuilding” the forms, that is, taking them apart in such a manner that they can be used again. The task requires some amount of knowledge and skill. A witness who is a carpenter on the job said that he had seen one laborer stripping a form and doing it wrong, with the result that the form was not re-usable. The same witness said that the day before the hearing was the first time he had seen laborers doing any carpenter work on the job. An Employer witness testified that on one day when they did a late concrete pour, carpenters were wheelbarrowing concrete (a laborer function typically). The late pour took about an hour. A witness who is a laborer on the job testified that he has not seen carpenters pushing wheelbarrows. The carpenters generally work in two-man teams, and such teams do not require a full-time laborer working as a carpenter tender to keep them supplied with materials. Thus one laborer may service several two-carpenter teams.

All employees were hired by project superintendent Claude Hebert. Some were interviewed by general foreman Don Sorenson. The Employer had placed a newspaper ad seeking “experienced Carpenters \$30.77 & Laborers \$26.50 with experience in Wood Framing, Concrete and Demolition work” for the project. The wage rates in the ad are the prevailing wage rates for those classifications established by the State. Some applicants applied for work as either a carpenter or a laborer. Hebert testified that he requires applicants to have at least five years’ prior experience for either position. One employee, Erik Berry, who applied for a carpenter job, was hired as a laborer, and after about a month on the job, the Employer determined that he was sufficiently skilled to be a carpenter and reclassified him. Berry was acquainted with Hebert prior to his hire. An Employer witness testified that another employee, Erik Spencer, is a laborer who had applied for work as a carpenter, but may be reclassified in the future as a carpenter, as he has been doing carpenter work about 50 percent of his time, although he has never been paid the carpenter’s wage rate for such work. Spencer did work on the roof tearing out old decking and replacing it; otherwise, Spencer works as a carpenter tender. One laborer, Darren Orris, also drives a Bobcat, and receives the prevailing wage rate for operators when he does so. He has driven the Bobcat about 14 hours since he was hired on July 15. Orris testified that he had not been asked to do any carpenter’s work until a few days before the hearing when Darren Lacasse, currently the lead on concrete, asked him to build some shoring braces, and Orris suggested that LaCasse find a carpenter to do that.

In the construction industry, the Board has found appropriate units of employees that constitute a clearly identifiable and functionally distinct group of employees, as well as finding separate units of craft employees to be appropriate. *Brown & Root, Inc.*, 258 NLRB 1002 (1981). The Board has found separate units of laborers to be appropriate. *R. B. Butler*, 160 NLRB 1595 (1966). Similarly, the Board has found separate units of carpenters to be appropriate. *ECM, Inc.*, 264 NLRB 1077 (1982).

In *ECM, Inc.*, supra, a unit of all carpenters and carpenter apprentices was sought. The Board found that there were approximately five carpenters who performed tasks similar to those traditionally performed by journeymen carpenters and who were required to have prior carpentry experience when hired. In addition, there were about 35 “crew carpenters” who were not skilled craftsmen and were not performing traditional carpentry work, but rather were working interchangeably with laborers assembling and dismantling prefabricated forms. The Board found a unit *confined to* the five journeymen carpenters to be appropriate.

In *Boudreaux's Drywall, Inc.*, 308 NLRB 777 (1992), the petitioner sought a unit limited to carpenters, while the employer contended that an appropriate unit would necessarily include laborers and plasterers. The Board upheld the Regional Director's finding that the appropriate unit included carpenters and "jobsite" laborers, where the carpenters had not completed any traditional apprenticeship program or achieved journeyman status in the craft, but instead were hired off the street with only some carpentry experience, and were not sent to schools or given any specialized training. In addition, laborers had been promoted from laborer to carpenter; the employer provided on-the-job training; laborers often assisted carpenters using carpentry tools, and even filled in for carpenter helpers and carpenters.

In *Dick Kelchner Excavating*, 236 NLRB 1414 (1978), the petitioners sought separate units of construction equipment operators and laborers. The operators performed work which required a high degree of skill. At times, operators worked as laborers when there were no operating tasks for them to perform. The Board found the *separate* units to be appropriate, saying that even though the operators at times performed laborers' functions, their primary function was operating equipment and special training and skills were required to do that work.

Here, while the carpenters are not required to have completed any traditional apprenticeship program, they are required to have at least five years of prior work experience as carpenters, and the record establishes that they are performing work which requires specialized skills. While there is no evidence that the Employer gives any formal test to job applicants, clearly the Employer applies some standard as to the degree of skills necessary to be a carpenter. At least two employees who applied for work as carpenters were hired as laborers. The Employer offered evidence that one laborer, who had some amount of prior work experience as a carpenter, was reclassified as a carpenter, and that a second laborer, who also had prior experience working as a carpenter, has been doing carpenter work (but without being paid carpenter's wages for such work) and may be reclassified in the future. However, the Employer's evidence fails to establish that it has any regular program through which laborers may learn carpentry skills. There is evidence that on occasion a laborer may do work normally done by carpenters, and a carpenter may on occasion do work normally performed by laborers, but the record does not establish that carpenters and laborers are interchangeable, or that the Employer assigns work without regard for skills and classifications. Rather, the record shows that carpenters perform work traditionally performed by carpenters and requiring the traditional skills and experience of carpenters, while laborers perform work traditionally performed by laborers. When members of both groups are working in the same area at the same time, they are each performing the tasks associated with their separate trades. There is no evidence that any laborer who has no previously-acquired carpentry skills performs any carpentry work or is being trained on the job by the Employer to perform carpentry work.

Thus, the record establishes that the carpenters are performing traditional carpentry work which requires the traditional skills of carpenters, and the laborers are performing the traditional work of laborers. There is no regular interchange between the two groups. The circumstances herein are more similar to those in which the Board has found separate units of carpenters and laborers to be appropriate, rather than those in which the Board has found combined units to be required. Moreover, no labor organization is seeking to represent carpenters and laborers together in a single unit. Therefore I conclude that a unit including all carpenters is an appropriate unit, and a unit including all laborers is an appropriate unit.

There are approximately 19 employees in the unit in Case 19-RC-13840. There are approximately 9 employees in the unit in Case 19-RC-13841.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the units found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the units who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by PACIFIC NORTHWEST DISTRICT COUNCIL OF CARPENTERS in Case 19-RC-13840, and by WASHINGTON and NORTHERN IDAHO DISTRICT COUNCIL OF LABORERS, LOCAL 292 in Case 19-RC-13841.

NOTICE POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision 4 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Seattle Regional Office, 2948 Jackson Federal Building, 915 Second Avenue, Seattle, Washington, on or before September 7, 1999. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by September 13, 1999.

DATED at Seattle, Washington, this 30th day of August, 1999.

/s/ PAUL EGGERT

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